Supreme Court, U.S.
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No. 99-2047

In The

Supreme Court of the United States

ANTHONY PALAZZOLO,

Petitioner,

v.

RHODE ISLAND *ex rel.* PAUL J. TAVARES, General Treasurer, and COASTAL RESOURCES MANAGEMENT COUNCIL,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Rhode Island

BRIEF OF COUNTY OF SANTA BARBARA AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICUS CURIAE COUNTY OF SANTA BARBARA

The County of Santa Barbara is situated in south central California along one of the most beautiful stretches of California's coast. The County has 413,000 residents and was visited by 8.5 million tourists in 1999. The County provides numerous recreational opportunities for its residents and visitors, and implements a wide range of land use and environmental regulations that preserve the area's natural resources and enhance recreational opportunities while allowing for reasonable growth and development.

Although it has an ongoing interest in the taking doctrine, the County primarily submits this brief in response to claims made by an organization that calls itself the California Coastal Property Owners Association (CCPOA). The emphasis of the CCPOA amicus curiae brief is on three pending California cases involving the County, two of which are being litigated by counsel for CCPOA. CCPOA Br. at 1-3, 15-21. CCPOA contends that these cases raise issues similar to those in *Palazzolo*.

CCPOA's submission is improper because it asks the Court to become involved in pending litigation before the lower courts have concluded their review and without the Court having the benefit of the record that would be available if the cases were properly before the Court. In fact, these cases raise issues that are much different from those in *Palazzolo*. The taking claims in these cases are barred by state law rules of res judicata, statute of limitations and waiver. These state law rules are uniformly

applicable to the landowners and their respective successors in interest, regardless of any intervening change in ownership.

The County, which was not served with the CCPOA submission, seeks briefly to set the record straight and to demonstrate why the lower courts' disposition of these cases is consistent with the Court's taking doctrine.

SUMMARY OF ARGUMENT

The three California cases discussed by CCPOA are very different from *Palazzolo*. The California cases do not focus on the effect of a sale to a new owner who was aware of previous restrictions on a property's use. Instead, these cases involve landowners who collaterally attack permit conditions that were imposed by the California Coastal Commission twenty or more years ago. The predecessors of these landowners failed to file timely actions challenging the permits conditions; instead they accepted the benefits of their permits and complied with the conditions. In these circumstances, the doctrines of res judicata, statute of limitations, and waiver preclude these untimely collateral attacks, whether by the original landowners or their successors in interest. The California jurispruduence illustrates why federal courts should give effect to state rules of procedure when adjudicating taking claims.

STATEMENT OF THE CASE

CCPOA'S argument concerns three cases involving the County that are now pending in the lower courts.

A. *Daniel v. County of Santa Barbara*

The first pending litigation for which CCPOA seeks this Court's involvement is *Daniel v. County of Santa Barbara*, U.S.C.D.Cal. No. CV 98-9453 MMM. The facts are simple. In 1974 Carl Johnson applied to the Coastal Commission to divide a large parcel into four separate lots. *Daniel v. County of Santa Barbara*, U.S.C.D.Cal. No. CV 98-9453 MMM, Order Granting Motion to Dismiss, Oct. 14, 1999, CCPOA App. at 4a. The South Central Coast Regional Commission approved the parcel map, on the condition that Johnson offer to dedicate a five-foot easement for pedestrian and bicycle access to the County of Santa Barbara. *Id.* Johnson appealed this decision to the Coastal Commission, which confirmed the regional commission's decision. *Id.* at 5a. Johnson did not seek judicial review of this decision and recorded the parcel map. *Id.* In 1977 Johnson applied to the Coastal Commission to construct a residence on one of the parcels. *Id.* The Coastal Commission approved the permit on the condition that Johnson record an offer of dedication identical to the one imposed on the parcel map. *Id.* Johnson built the residence as authorized by the permit. *Id.* at 6a.

In 1987, after being contacted by the Coastal Commission, Bruce and Darleine Bucklew, who had since acquired the Johnson property, executed and recorded the irrevocable offer of dedication that was required by the coastal permit issued to Johnson. *Id.* at 6a. The plaintiffs

Ann Daniel and Leonard Hill thereafter purchased the property from the Bucklews in 1997. *Id.* at 9a. On October 6, 1998, after the County notified them that it intended to accept the offer, the plaintiffs served a "notice of rescission" of the offer of dedication on the County. *Id.* The County accepted the offer of dedication two weeks later. *Id.*

The plaintiffs then filed an action against the County, making numerous arguments that attacked the constitutionality of the 1974 and 1977 permit conditions and the ability of the County to accept the offer of dedication over their objections. *Id.* at 10a. The district court granted the County's motion to dismiss. The district court found that the alleged taking occurred at the time that the permit conditions were imposed in the 1970's because at that point the Coastal Commission exacted a future easement over the property. *Id.* at 20a. Therefore, the plaintiffs lacked standing to challenge the constitutionality of the offer of dedication, because the prior owners had conveyed away the interest that was allegedly taken before they sold the property to the plaintiffs. *Id.* at 24a-25a. The court also found that, even assuming that they had standing, the plaintiffs' challenge was barred by the statute of limitations because the original owners did not bring a timely judicial challenge when the offers of dedication were exacted many years earlier. *Id.* at 26a-27a. Finally, the taking claim was unripe because the plaintiffs had not first sought compensation in the state courts. *Id.* at 27a-29a.

B. *Parker v. California Coastal Commission* and *Cole v. County of Santa Barbara*

The other ongoing litigation challenged by CCPOA involves two related actions brought by the Stanford Farms Trust, *Parker v. California Coastal Comm'n*, San Francisco Sup. Ct. No. 305674 and *Cole v. Board of Supervisors*, Santa Barbara County Sup. Ct. No. 01003407. *See* L.A. Times, "Billionaire Battles Authorities on Access to Beach," December 11, 2000, p. A3. These cases involve a 25-acre parcel of coastal property in the Hope Ranch area of Santa Barbara. Verified Complaint for Rescission and Declaratory Relief, and Petition for Administrative Mandamus, *Parker v. California Coastal Comm'n* ("Complaint"), San Francisco Sup. Ct. No. 305674, April, 21, 1999, at 4.

In 1980, Francice Bushkin, then the owner of the property, applied to the Coastal Commission for a coastal development permit to add a sunroom and wooden deck to an existing guest house. Complaint at 5. On May 9, 1980, the Coastal Commission approved the permit. *Id.* The permit contained a condition requiring that Bushkin record an irrevocable offer to dedicate to the public a lateral access easement running across the coastal side of the property. *Id.* at 6. In May 1982, Bushkin recorded the irrevocable offer to dedicate that was required by the permit condition. *Id.* at 7. The Coastal Commission issued the permit, and Bushkin constructed the sunroom and the deck. *Id.* Bushkin did not file a legal action or otherwise challenge the permit condition.

In October 1995 the Stanford Farms Trust acquired the subject property. Complaint at 4. The Trust has never

denied that it was aware of the recorded offer of dedication when it acquired the property. On October 16, 1998, Gregory Parker, then the trustee of the Trust, recorded a document entitled "Notice of Revocation and/or Rescission of Offer to Dedicate Public Access Easement." *Id.* at 8, Ex. D to Complaint. This document recited Parker's objection to the 1980 permit condition and stated that the offer to dedicate "has been revoked and rescinded." *Id.*

The Coastal Commission found that Parker's attempt to revoke the recorded irrevocable offer of dedication violated the conditions of his predecessor's permit and issued a cease and desist order requiring that Parker take corrective action. Complaint at 9, Ex. E to Complaint. It is undisputed that the trustees have never complied with the cease and desist order, nor have they removed the revocation document from the records of the County recorder.

Parker then filed an action against the Coastal Commission. In his first two causes of action, Parker sought declaratory relief to invalidate the 1980 permit condition. Complaint at 10-11. The third cause of action was a petition for a writ of mandate that challenged the validity of the cease and desist order. *Id.* at 11-12. The Coastal Commission filed an answer and a cross-complaint for violation of the cease and desist order. On January 3, 2000, the trial court issued an order that sustained the Coastal Commission's demurrer to the first two causes of action of Parker's complaint without leave to amend on the grounds that the first two causes of action were barred by the doctrines of res judicata and waiver. *Parker v. California Coastal Comm'n*, Amended Order on Motion, January 3, 2000. The California Court of Appeal denied

Parker's petition for a writ of mandate to set aside the trial court 's order. *Parker v. California Coastal Comm'n*, Cal.Ct.App. No. A090010.) The California Supreme Court denied Parker's petition for review. *Id.*, Order of April 26, 2000.

On February 15, 2000, after the Trust's defeat in the San Francisco courts, the County accepted the irrevocable offer of dedication. Joseph Cole (the Trust's new trustee) then filed an action against the County (but not the Coastal Commission) in Santa Barbara County Superior Court. *Cole v. Board of Supervisors*, Santa Barbara County Sup. Ct. No. 01003407. This action challenges the legality of the very same irrevocable offer of dedication that the trial court in *Parker* upheld when it sustained the Coastal Commission's demurrer. On November 21, 2000, the Santa Barbara trial court sustained the County's demurrer without leave to amend.

I. THE CALIFORNIA CASES INVOLVE APPLICATION OF UNIFORM PROCEDURAL RULES THAT PROHIBIT LANDOWNERS FROM COLLATERALLY ATTACKING PERMIT CONDITIONS WHERE THE LANDOWNERS OR THEIR PREDECESSORS FAILED TO TIMELY CHALLENGE THE CONDITIONS, OR COMPLIED WITH THE CONDITIONS AND ACCEPTED THE BENEFITS OF THE PERMIT.

In an effort to connect these cases and the *Palazzolo* case, CCPOA asserts that the County and the Coastal Commission have relied on the same arguments adopted by the Rhode Island courts in *Palazzolo*. CCPOA Br. at 2. CCPOA is referring to the discussion by the Rhode Island Supreme Court that regulations in existence at the time of

acquisition form background principles of state law that shape the successor landowner's property interest. CCPOA's characterization of the arguments of the County and the Coastal Commission is untrue. As this brief makes evident, both agencies have relied on distinct state law rules that are uniformly applicable to both landowners and their successors in interest who assert untimely collateral attacks on permit conditions. CCPOA's misguided argument demonstrates the dangerous inroads on the integrity of state rules of procedure and property that are threatened by Palazzolo and his supporters.

We briefly discuss the state grounds on which the lower courts relied in rejecting these untimely collateral attacks, and then explain why these grounds are unaffected by the issues raised in *Palazzolo*.

A. Landowners are Barred from Collaterally Attacking a Permit Condition Where the Original Permittee Failed to Bring a Timely Action Challenging the Condition.

Under the California Coastal Act, an aggrieved person must file a petition for a writ of administrative mandate within 60 days of the Coastal Commission's permit decision. Cal. Pub. Resources Code, § 30801. If a landowner fails to file a timely challenge, the Coastal Commission's administrative permit decisions became final, and the application of traditional state law principles of res judicata and collateral estoppel preclude the landowner from relitigating the validity of the Coastal Commission's decision or seeking alternative forms of relief in

a different proceeding. The courts have expressed the rule this way:

> Failure to obtain judicial review of a discretionary administrative action by a petition for a writ of administrative mandate renders the administrative action immune from collateral attack, either by inverse condemnation action or by any other action. *Patrick Media Group, Inc. v. California Coastal Comm'n*, 9 Cal.App.4th 592, 608, 11 Cal.Rptr.2d 824, 833 (Cal.App. 1992).

Applying this rule, the California courts have repeatedly rejected collateral attacks on permit conditions, including public access conditions. *See California Coastal Comm'n v. Superior Court (Ham)*, 210 Cal.App.3d 1488, 258 Cal.Rptr. 567 (Cal.App. 1989) (rejecting collateral attack on access condition where landowner failed to file timely challenge, complied with condition and accepted benefits of permit); *Rossco Holdings, Inc. v. State of California*, 212 Cal.App.3d 642, 260 Cal.Rptr. 736 (Cal.App. 1989), *cert. denied*, 494 U.S. 1080 (1990) (barring collateral attack on access conditions where applicant failed to timely file a challenge to conditions); *Ojavan Investors, Inc. v. California Coastal Comm'n*, 26 Cal.App. 4th 516, 32 Cal.Rptr. 103 (Cal.App. 1994), *cert. denied*, 513 U.S. 1148 (failure to timely challenge permit conditions renders them immune from collateral attack).[1]

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[1] A claim for inverse condemnation arising from an administrative action must be filed within the same period of limitations as the administrative mandamus claim. *Hensler v. City of Glendale*, 8 Cal.4th 1, 22, 876 P.2d 1043, 1056-57, 32 Cal.Rptr.2d 244, 257-58 (Cal. 1994), *cert. denied*, 513 U.S. 1184 (1995).

In *Parker* and *Cole*, the original permittee (Buskin), never filed an action challenging the Coastal Commission's 1980 permit decision; in *Daniel*, the original permittee (Johnson) also failed to challenge the Coastal Commission's decision. Therefore, any challenge to the validity of the permit conditions in these cases is barred by the statute of limitations and doctrine of res judicata, without regard to whether the challenge is being made by the original permittee or a successor in interest.

B. Landowners Who Comply with a Permit Condition or Accept the Benefits of a Permit, Waive Challenges to the Permit Condition for Themselves and Subsequent Owners.

These collateral attacks on permit conditions also are barred under the doctrine of waiver. Under this doctrine, a challenge to a permit condition is waived when the landowner complies with the permit condition or accepts the benefits of the permit. *County of Imperial v. McDougal*, 19 Cal.3d 505, 510-12, 564 P.2d 14, 17-18, 138 Cal.Rptr. 472, 474-75 (Cal.), *app. dismissed*, 434 U.S. 944 (1977) (rejecting challenge to use permit by successor to original permittee on grounds that permit runs with land and binds successor in interest and that a landowner or his successor is barred from challenging a permit condition when he either specifically agrees to the condition, fails to challenge its validity, or accepts the benefits of the permit). The rule has been applied many times. *Rossco*, 212 Cal.App.3d at 654, 260 Cal.Rptr. at 742 (waiving challenge to access condition by receiving benefits of permits and by complying with condition); *see Ojavan Investors, Inc.*, 26 Cal.App.4th at 527-28; 32 Cal.Rptr.2d at 110; *City of*

Santee v. Superior Court, 228 Cal.App.3d 713, 279 Cal.Rptr. 22 (Cal.App.1991); *Pfeiffer v. City of La Mesa*, 69 Cal.App.3d 74, 137 Cal.Rptr. 804 (Cal.App.1977).

This waiver doctrine applies in these cases. In *Parker* and *Cole*, Buskin recorded the offer to dedicate required by the Coastal Commission's permit condition and accepted the benefits of the permit by building the improvements authorized by the permit. *See* pp. 4-5 *supra*. In *Daniel*, Johnson recorded the parcel map and constructed the residence approved by the permit. *See* p. 3 *supra*. Consequently, regardless whether it is asserted by the original permittee or a successor in interest, any challenge to the validity of the permit conditions in these cases has been waived.

II. CCPOA ERRONEOUSLY CONTENDS THAT SUBSEQUENT LANDOWNERS ARE ENTITLED TO RIGHTS THAT ARE GREATER THAN THEIR PREDECESSORS.

Palazzolo argues that Rhode Island's wetlands restrictions that were enacted after his corporation acquired the property but before he acquired it are not part of the background principles that define his property interest because he cannot have lesser rights than those of his predecessor. Putting aside the merits of Palazzolo's characterization, CCPOA's argument here is the reverse of Palazzolo's; it contends in effect that successor landowners have greater rights than those of their predecessors and may assert constitutional claims that would have been unavailable to their predecessors.

Taken to its logical extreme – and CCPOA imposes no limits on it – CCPOA's argument means that landowners would be permitted to collaterally attack permit conditions on constitutional grounds with impunity, twenty, 50 or 100 years after issuance of the permit, and even after the landowners have obtained the benefits of their permit conditions during those periods. This argument highlights the unhealthy degree to which Palazzolo's supporters seek to supplant state law rules of procedure, land use and real property with a regime that federalizes every aspect of state law whenever a landowner alleges a constitutional claim.

The inherent problem with CCPOA's argument is easily demonstrated. Assume that Bushkin, the Trust's predecessor, had filed a judicial challenge to the Coastal Commission's permit condition and alleged that it sought to exact an unconstitutional taking. If the Court had issued a judgment resolving the taking claim adversely to Bushkin, no one would dispute that she and her successors in interest would be barred by the doctrine of res judicata from relitigating the validity of the permit condition twenty years later. *E.g., Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1116-1117 (1988). That Bushkin failed to file a timely judicial challenge – and actually accepted the benefits of the permit and recorded the offer of dedication – leaves her and her predecessors in the same position that they would have been had Bushkin unsuccessfully litigated the taking claim.[2]

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[2] There is another way of viewing this. The new owners in the pending cases by definition obtained title to no more than what their predecessors had a right to convey. Because the

Nevertheless, with characteristic overstatement, CCPOA contends that these cases and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), raise identical issues and that *Nollan* authorizes the plaintiffs in these cases to engage in their collateral attacks on permit conditions that were imposed more than 20 years ago. The situation in *Nollan* and these cases differ in obvious and compelling ways. In *Nollan*, the landowner timely challenged the permit condition in an administrative mandamus action, did not comply with the condition and did not accept the benefits of the permit. In these three pending cases, the predecessors of these landowners *did not timely challenge* the permit condition in an administrative mandamus action, *complied with* the condition and *accepted* the benefits of the permit. Consequently, as demonstrated pp. 8-11 *supra*, the plaintiffs in these pending cases, just like their predecessors, are precluded from challenging the validity of these permit conditions, regardless of whether the permit condition today might have satisfied the standards in *Nollan*. *Rossco*, 212 Cal.App.3d at 654-655, 260 Cal.Rptr. at 132-133; *Ham*, 210 Cal.App.3d at 1497-1499, 258 Cal.Rptr. at 570-72.

The only argument possibly left to CCPOA is that the taking doctrine requires that federal law supplant state rules of procedure and property to govern the time for asserting taking claims. CCPOA does not make such an argument, nor could it.

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predecessors had lost their ability to timely challenge the permit conditions and instead recorded the offers of dedication before conveying their property to the plaintiffs, these plaintiffs have no standing to challenge the offer of dedication. *See Ojavan Investors, Inc.*, 26 Cal.App.4th at 528, 32 Cal.Rptr. at 110.

First, federal courts generally look to state law to provide the limitations period for federal constitutional claims. *See Wilson v. Garcia*, 471 U.S. 261 (1985) (state personal injury limitations statute applies to section 1983 claims). Although the facts of *Wilson* involved a section 1983 claim of unlawful arrest and use of force, the circuits have consistently held that the *Wilson* analysis applies to federal takings claims brought directly under the Fifth Amendment, and other direct constitutional claims. *287 Corporate Ctr. Assocs. v. Township of Bridgewater*, 101 F.3d 320, 323 (3d Cir. 1996) (direct takings claims); *Bieneman v. City of Chicago*, 864 F.2d 463, 467-70 (7th Cir. 1988), *cert. denied sub nom., City of Chicago v. Bieneman*, 490 U.S 1080 (1989) (direct takings claims); *Chin v. Bowen*, 833 F.2d 21, 23-24 (2d Cir. 1987) (action brought directly under Fourteenth Amendment); *McSurely v. Hutchison*, 823 F.2d 1002, 1005-06 (6th Cir. 1987), *cert. denied*, 485 U.S. 934 (1988) (allegation of unconstitutional surveillance); *cf. Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 689 n.4 (9th Cir. 1993), *cert. denied*, 510 U.S. 1093 (1994) (as-applied takings claims brought under section 1983).

Second, even if it were applicable, federal law would achieve the same result. This Court has repeatedly required property owners to challenge application of permit requirements and exhaust administrative and judicial remedies on a case-by-case basis before a constitutional taking claim may be brought. *Williamson Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986). The principle of administrative finality also applies under federal law, *see United States v. Utah Construction Co.*, 384 U.S. 394, 422 (1966), and the statute of limitations may bar federal

constitutional claims, *see Block v. North Dakota* ex rel. *Bd. of University and School Lands*, 461 U.S. 273, 292 (1983). Moreover, the federal rule of res judicata precludes relitigation of issues that might be decided differently today:

> A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. (Citations omitted.) Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. (Citations omitted.) *Federated Department Stores v. Moitie*, 452 U.S. 394, 398-399 (1981).

Under any rule of state or federal procedure, it is too late to relitigate the validity of unchallenged permit conditions imposed many years ago, no matter what the merits of those permit decisions might be in retrospect, and regardless of whether it is the original landowner or a successor that is making the challenge.

CONCLUSION

It was inappropriate for CCPOA to use the *Palazzolo* case as a vehicle for bringing its own unrelated actions to the Court, particularly in the absence of a complete record in those cases. Should the Court consider CCPOA's submission, these pending cases present very different issues than those raised in *Palazzolo* and demonstrate why courts should give effect to state rules of

property and procedure when adjudicating the timeliness of taking claims. The Court should affirm the judgment of the Rhode Island Supreme Court.

Respectfully submitted,

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